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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,463	04/01/2004	Jurgen Koch	22735	8396
535	7590	03/25/2005	EXAMINER	
THE FIRM OF KARL F ROSS 5676 RIVERDALE AVENUE PO BOX 900 RIVERDALE (BRONX), NY 10471-0900			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/816,463	<b>Applicant(s)</b> KOCH ET AL. <span style="float: right;">EP</span>	
	<b>Examiner</b> Josiah Cocks	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/27/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawing filed 4/1/2004 is of poor line quality and is difficult to read. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "relatively" in claim 1 is a relative term, which renders the claim indefinite. The term "relatively" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim 2 recites the limitation "the cover plate" in line 2. There is insufficient antecedent basis for this limitation in the claim. As best can be determined, and for the purpose of an examination on the merits, this recitation has been regarded as simply --the plate--.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,619,164 to Harper et al. ("Harper") in view of U.S. Patent No. 6,244,263 to Schlosser et al. ("Schlosser").

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Harper discloses in Figures 1-14 an invention similar to that described in applicant's claims 1-8 and 12. In particular, Harper shows a burner assembly with a main burner having a ring (12) centered on an axis defining an array of outwardly open holes (36), means (24) or supplying a gas/air mixture to the ring, a small burner centered on the axis, and means (18) for supplying a gas/air mixture to the small burner. A horizontal top cap (30) is attached to the main burner and secured via fastening elements (32). These elements (32) are considered to be the projections and feet recited in claim 5. Further, it would have been obvious to one having ordinary skill in the art to have selected three of these projections since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ; see also MPEP § 2144.04(VI)(B).

Harper possibly does not disclose that the top cover plate is a generally circular disk having an outer diameter greater than the outer diameter of the small burner.

Schlosser teaches a burner assembly in the same field of endeavor as Harper. In Schlosser, the burner includes a ring and a cap (38) arranged as a circular disk and secured via projections (78), which interact with corresponding receptacles (80). The cap is sized to have an outer diameter that is greater than both an inner and outer diameter of the ring of the main burner (see Fig. 5), and would therefore also be larger than the outer diameter of the small burner of Harper.

Therefore, in regard to claims 1-8 and 12, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner assembly of Harper to include the cap of Schlosser as this cap is desirably sized and shaped to assist in maintaining unit of elements of the burner head (see Schlosser, col. 7, lines 52-59).

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7. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper in view of Schlosser as applied to claim 1 above, and further in view of U.S. Patent No. 3,773,027 to Dodd ("Dodd").

Harper in view of Schlosser teach all the limitations of claims 9-11 except for a support for holding a cooking vessel wherein the support is made of glass and includes throughgoing holes.

Dodd teaches a burner assembly in the same field of endeavor as Harper. In Dodd, the burner assembly (23) includes a top glass support (26 and 28) for holding a cooking vessel above the burner (see abstract). Portion/plate (28) of this support is dimensioned such that spaces are formed between counter-top (26) and the plate (28) (see Fig. 2). These spaces are considered to be throughgoing holes.

Therefore, in regard to claims 9-11, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the assembly of Harper to incorporate the glass support of Dodd as this support forms a aesthetically pleasing and readily cleanable top surface (see Dodd, col. 1, lines 53-63).

### ***Conclusion***

8. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents to Sasada et al., Yen, Harneit, and Dane, and WIPO patent WO 00/49338 are cited to further show the state of the art concerning burner assembly structure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
March 21, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749